Supreme Court, U.S.
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No. 04-

IN THE
Supreme Court of the United States

AC 23185
WILLIAM L. ANKERMAN
VS.
STATE OF CONNECTICUT
NEW HAVEN J.D., NO. CR 99-195282

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF THE STATE OF CONNECTICUT

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QUESTIONS PRESENTED

1. Does the State have the right to deny the Defendant of the opportunity to state his defense as to *his understanding of the law* at the time of his conduct merely because he was not found by the trial court to be an "expert of the law?"

2. Was the Petitioner deprived of due process in a prosecution for embezzlement, under Connecticut General Statues §§ 53a-119(1) and -122(a)(2), where the judgment of the trial court *necessarily depended* upon *sub-silentio* over-ruling of numerous extant Connecticut Supreme Court and Appellate Court case precedents, which define the "wrongfulness" of the Petitioner's conduct?

3. Was the Petitioner deprived of due process in a prosecution for embezzlement, under Connecticut General Statutes §§ 53a-119(1) and -122(a)(2), where the State neither alleged nor proved the specific property embezzled?

4. Was the Petitioner deprived of due process in a prosecution for embezzlement, under Connecticut General Statutes §§ 53a-119(1) and -122(a)(2), where the State failed to allege the location of the crime?

5. Was the Petitioner deprived of due process because the "wrongfulness" of his conduct was judged on the basis of law which did not exist at the time of his conduct *and* of which the State failed to prove Petitioner was aware in 1994-1996, the time of his crime?

6. Whether the Petitioner's due process rights were violated where the trial judge vouched for certain of the state's witnesses in his instructions to the jury?

PARTIES TO THIS CASE

1. *Petitioner*

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2. *Respondent*

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No. 04- _____

IN THE

Supreme Court of the United States

No. AC 23185

WILLIAM L. ANKERMAN

v.

STATE OF CONNECTICUT

Trial Court, New Haven J.D., No. CR99-195282

PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE COURT OF THE STATE OF CONNECTICUT

Petitioner William L. Ankerman respectfully petitions for a Writ of Certiorari to review the judgment of the Appellate Court of Connecticut.

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OPINIONS BELOW

The trial court opinion was not published.

The Appellate Court opinion is: *State v. Ankerman*, 81 Conn. App. 503, 840 A.2d 1182 (2004).

The denial of petitioner's Petition for Certification to the Connecticut Supreme Court is found at *State v. Ankerman*, 270 Conn. 901, A2d_ (2004).

JURISDICTION

The trial court judgment entered on June 7, 2002, and is not published.

The Appellate Court decision was entered on February 14, 2004, and is published in 81 Conn. App. 503, 840 A.2d 1182 (2004). A Motion for Reconsideration of this decision was filed on March 5, 2004, and denied on April 21, 2004.

Petitioner's Petition for Certification to the Connecticut Supreme Court was filed on May 11, 2004, and denied on June 16, 2004, 270 Conn. 901, ____ A.2d _____ (2004). Petitioner's Motion for Reconsideration on Denial of Petition for Certification was filed on June 25, 2004, and denied on July 7, 2004.

The jurisdiction of this court is invoked under Supreme Court Rule 13.1 and 28 U.S.C. § 1254(1).

STATUTES AND CONSTITUTIONAL PROVISIONS INVOLVED IN THE CASE

14th Amendment to the United States Constitution, see Appendix, page 21a.

Connecticut General Statutes §53a-119(1), see Appendix, page 22a.

Connecticut General Statutes § 53a-122(a)(2), see Appendix, page 23a.

STATEMENT

This criminal case charging "embezzlement," shakes the very foundations of the American System of Justice, embodied in the *Due Process Clause* of the Fourteenth Amendment, the "Rule of Law."

Petitioner was convicted of "wrongfully" taking *property of another* in his care and custody, pursuant to Connecticut General Statutes §§ 53a-119(a)(1) and 1-122(a)(2). The trial judge provided no instructional guidance to the jurors as to the legal rules governing whether defendant's actions were "wrongful." The explanation of those rules and how those substantive *legal rules* were to be applied to the other facts of this case was left to State's witnesses to declare by expert testimony before the jury. The jury was, therefore, "instructed" on the law of the "wrongfulness" of the Defendant's conduct by the complaining witness's attorney, acting as an Expert on the law.[1]

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[1] The following cases were relevant to the case under consideration, but their holdings as precedent were ignored by the trial and appellate courts in this case, effectively overruling them *after* the date of the Defendant's conduct.

This issue was raised below in the trial court in numerous places, but specifically in The Motion for Judgment of Acquittal, Transcript April 10, 2002, page 95, see Appendix 26a, affirmed in the Appellate Court, Appendix 1, page 18a.

1. *Gorham v. Gorham*, 41 Conn. 242, 244 (1874), which states "[i]t must be difficult, to a degree bordering on the impossible, for one person to testify of his own knowledge, what the understanding of another was, as to any given question. Such testimony is not to a fact; it must be merely an opinion, a conjecture as to a fact."

In the case under consideration in this Petition, the State's witness, Terence A. Zemetis, was allowed, *over objection*, see Appendix 1, page 16a, n. 11, to testify to an out-of-court bonding company's rationale for paying the probate bond, which violates the rule of *Gorham v. Gorham, supra*. See *State v. Ankerman*, 81 Conn. App. 503, 516, n. 11, 840 A.2d 1182 (2004). This appellate decision included a conclusion that, *because*

Zemetis had made the application for payment of the bond, *he*, "therefore," *knew* why the bond was paid. This conclusion is *fallacious*. One who makes an application [for payment of a bond] does not, by virtue of merely having made that application, thereby, become privy to the payor's thought processes and, therefore, competent to testify to those unexpressed thought processes. Perhaps the bonding company erred and paid by mistake or was *fraudulently induced* to pay, by the claimant or her lawyer.

There, also, was no independent showing that the Defendant himself, was ever a bonded party in the case, although the Appellate Court recited, at 81 Conn. App. 503, 506, 840 A.2d 1182 (2004), that the Guardians, *themselves*, posted a bond in the sum of $30,000, yet there was no evidence that the Defendant, Ankerman, had been required to post a bond or that he had ever posted a bond in this case. Further, although it is recited by the Appellate Court that the probate "bonding company was ultimately required to pay the bond," there was no evidence in the record that the bonding company was ever *required* to pay the bond, but only that it *did* pay the bond. See *State v. Ankerman*, 81 Conn. App. 503, 506 (2004), while the Appellate Court recited, at 81 Conn. App. 503, 505 (2004),a s follows: "The Probate Court required a bond of $30,000 of the guardians."

2. *Strong v. Foote*, 42 Conn. 205 (1875); [See Transcript 4/11/2002, page 31, lines 21-22.] and *Yale Diagnostic Radiology v. Estate of Fountain*, 267 Conn. 351, 838 A.2d 179 (2004), in that the state claimed that the minor, *herself*, could not be liable for the Yale University billings, and this argument was affirmed by the Appellate Court, directly contrary to each of these cases. The identical law firm which was plaintiff's attorney in the *Fountain* case was the collection firm representing the Plaintiff, which was pursuing Forbes in the collection case herein, on behalf of Yale University.

3. *Kukanskis v. Jasut*, 169 Conn. 29, 38, 362 A.2d 172 (1975), in that a party testified to a legal interpretation of the contingency fee agreement.

In this case, a signatory of the contingency fee agreement, Leslie Forbes, testified as to that agreement's legal construction, clearly violating the rule of *Kukanskis v. Jasut, supra*.

4. *Morrissette v. United States*, 342 U.S. 246 (1952), in that the defendant's specific and subjective state of mind was not considered by the jury, i.e., not *what he knew*, but, rather, *what he should have known*, as to whether his actions were "wrongful."

5. *State v. Paulino*, 223 Conn. 461, 467-68, 631 A.2d 720 (1992), in that the trial judge did not perform a balancing test and strictly limit the impact of inadmissible evidence.

This expert testimony was harmful in at least four ways:

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6. *Katsetos v. Nolan*, 170 Conn. 637, 368 A.2d 172 (1976), in that the Defendant was convicted because he failed to ignore danger to the client, when her trust fund was attacked by Yale University by a proof of claim.

7. *Simone v. Connecticut Light & Power Co.*, 187 Conn. 487, 447 A.2d 1071 (1982), in that the letter of December 6, 1998, Exhibit #14, was ambiguous and not clearly an admission of liability and should have been excluded as an offer of compromise.

8. Probate courts have jurisdiction to order a nonparty to pay a certain sum of money to a party to a probate estate, even without service of process, in spite of *Fowler v. Collins*, 2 Root 231 (1795); *Edy v. Williams*, 1 Root 185 (1790); *Spalding v. Butts*, 5 Conn. 427 (1824); *Norton v. Strong*, 1 Conn. 65 (1790); *Phillips v. Moeller*, 147 Conn. 482, 163 A.2d 95 (1960); *Dettenborn v. Hartford National Bank & Trust Co.*, 121 Conn. 388, 185 At. 82 (1936); and *Palmer v. Hartford National Bank*, 160 Conn. 415, 279 A.2d 726 (1971).

9. Statutory interest is calculated by the plaintiff without effective court supervision, in spite of *Bertozzi v. McCarthy*, 164 Conn. 4653, 467, 323 A.2d 553 (1973).

10. Statutory interest is calculated on the **gross** amount from the time that that gross amount is received by the defendant, overruling *Fox v. Schaeffer*, 131 Conn. 439, 446, 41 A.2d 46 (1944).

11. Statutory interest is subject to compounding, in spite of *Stafford Spring Agricultural Society Receivership*, 10 Conn. Supp. 201 (1941); *In re Tucknell*, 94 B.R. 277 (Bktcy, D. Conn., 1989); *Cherokee Nation v. United States*, 270 U.S. 476, 490, 115 S. Ct. 1458, 131 L. Ed. 2d 350 (1926).

12. Connecticut law is a proper subject of expert testimony, overruling *Turner's Appeal*, 72 Conn. 305, 316 (1899); *Lockwood v. Crawford*, 18 Conn. 361, 370 (1847).

13. All trusts for minor beneficiaries, as a matter of law, must terminate when the minor attains majority. See Bogert & Bogert, Law of Trusts (5th Ed.) § 149, at 536-37.

14. Subrogation liens are, as a matter of law, invalid *vis-à-vis* a minor's property, overruling *State v. Blawie*, 31 Conn. Supp. 552, 334 A.2d 484 (1974).

1. It deprived the Defendant of the opportunity, by appealing from instructional error, to test the legal validity of those "rules."

2. It left the jurors with no judicial guidance as to "wrongfulness" of the defendant's actions. Instruction as to the law from any source other than the trial judge is dangerous and is to be avoided. See *Marx & Co., Inc. v. Diners' Club, Inc.*, 550 F.2d 505, 508 (2d Cir., 1977).

Such testimony is also clearly illegal and inadmissible even under Connecticut law, per *Turner's Appeal*, 72 Conn. 305, 316 (1899), and *Lockwood v. Crawford*, 18 Conn. 361, 370 (1847), at least *apparently* prior to *State v. Ankerman*, 81 Conn. App. 503, 840 A.2d 1182 (2004).

3. It created *ex post facto* effect of the crime, by *defining* the crime after the actions were taken by the Defendant.

4. It deprived Defendant of prior notice as to the *legality* of his actions, six years before the jury trial, effectively depriving the Defendant *and his criminal trial* of due process.

a. Due process requires advance notice to the Defendant that his *contemplated* conduct is illegal. *Lambert v. California*, 355 U.S. 225, 2 L.Ed. 2d 228, 78 S. Ct. 240 (1957).

In this case, the legal rules governing whether the contemplated conduct was illegal were provided *only* by expert testimony and not by the trial court's instruction to the jury. The legal rules testified to by the expert witnesses were contrary to Connecticut law on the book at the time of the "crime," as shown in footnote 1 in this petition.

b. A Defendant must have advance notice of the illegality of his contemplated course of conduct for its prohibition to be consistent with due process.

Lambert v. California, *supra*.

Morrissette v. United States, 342 U.S. 246, 72 S.Ct. 240, 96 L. Ed. 288 (1952).

Here, the only notice as to the "illegality" of Defendant's conduct came six years later in the form of expert opinion by the Complainant's attorney and the local probate judge. The Defense was that Defendant's actions were not *illegal* at the *time* he did them, according to the law of Connecticut, as he attempted forcefully to explain this legality by citation of cases and statutes, as he understood the relevant law, and had written about it,[2] but was barred from this testimony by the trial judge's sustaining the State's objection to this testimony. The confusion was that, in reality, the "law" became the "fact" in this case.

The Court effectively precluded the Petitioner from testifying as to his state of mind, i.e., his intent, at the time of the crime charged. This was important in at least two ways:

1. Whether he was *contemporaneously* intending to take property of another.

2. Whether the property Petitioner transferred *was legally still the property of the minor ward.*

Each of these issues depended on state law and the Court failed to instruct on these issues, but left the "instruction" to expert witnesses.

This judgment of conviction was affirmed on all points by the Connecticut Appellate Court and Defendant's Petition for Certification to the Connecticut Supreme Court was denied.

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[2] Transcript 4/10/02, p. 135, lines 6-9.

REASONS TO GRANT CERTIORARI

1. The use of expert legal opinion as to domestic law is contrary to *Marx & Co., Inc. v. Diners' Club, Inc.*, 550 F.2d 505 (2d Cir., 1977), and *Specht v. Jensen*, 853 F.2d 805 (10th Cir., 1988), as well as prior decisions of the Connecticut Supreme Court, *Turner's Appeal*, 72 Conn. 305, 316 (1899), and *Lockwood v. Crawford*, 18 Conn. 361, 370 (1847), and of the Connecticut Appellate Court, in *Orange Street Armory Associates v. City of New Haven*, 17 Conn. App. 166, 173, 551 A.2d 759 (1988). Supreme Court Rule 10(b).

2. The failure to allege[3] and prove specific property embezzled is contrary to *Moore v. United States*, 160 U.S. 268, 40 L. Ed. 422, 16 S. Ct. 294 (1895), and *Grant v. State*, 17 So. 225 (Fla. Supreme Court, 1895). Supreme Court Rule 10(b) & (c).

3. Implicitly overruling of prior Connecticut Supreme Court case precedent, *after the time* of the defendant's conduct deprives the Defendant of *fair notice* that his then *contemplated* conduct would be illegal, the Connecticut Appellate Court's affirming of the trial court judgment is, therefore, contrary to *State v. Prince*, 189 P.2d 993, 995 (New Mexico Supreme Court, 1948), containing the following language; "A penal statute should define the act necessary to constitute an offense with such certainty that a person who violate it *must know* that his act is criminal *when* he does it." [Emphasis supplied]. This was also contrary to *State v. Kirby*, 63 P. 752, 754 (Kans. 1901). Supreme Court Rule 10(b).

4. The Defendant's state of mind at the time of the crime is a crucial and essential element of the crime of larceny by embezzlement. *Morrissette v. United States*, 342 U.S. 246, 71

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[3] See Transcript 4/11/2002, page 11, line 21.

S.Ct. 240, 96 L.Ed. 288 (1952). In this case, by precluding the Petitioner from testifying as to his state of mind (i.e., his understanding of the law at the time of his conduct), the trial court deleted *scienter* as an element of the crime, in violation of the law set out in *Morrissette v. United States, supra*, and *Lambert v. California, supra*. Supreme Court Rule 10(c).

5. An *ex post facto* change of domestic case law after the time of the Defendant's conduct deprives the Defendant of due process, as happened in this case. For the trial court to convict the Petitioner it necessarily had to find that he had no right to charge his legal fees to the minor's trust account. This was directly contrary to numerous Connecticut cases as detailed in footnote 1, above, especially in the discussion of *Strong v. Foote*, 42 Conn. 205 (1875), a case reaffirmed *while this case was under appellate consideration* by *Yale Diagnostic Radiology v. Estate of Fountain*, 267 Conn. 351, 838 A.2d 179 (2004). By this effectively *ex post facto* change in Connecticut case law, the Connecticut Appellate Court deprived the Petitioner of due process, contrary to *O'Neil v. Northern Colorado Irr. Co.*, 242 U.S. 20, ____ L.Ed. ____, ____ S. Ct. ____ (1916); *Sauer v. New York*, 206 U.S. 536, 548, 51 L.Ed. 117 27 S. Ct. 686 (1907); and *Chicago & A.R. Co., v. Tranbarger*, 238 U.S. 67, 76, 595 L.Ed. 1204, 1210, 35 S. Ct. 678 (1915). Supreme Court Rule 10(c).

6. In the trial and appellate courts' reading of Petitioner's "Self-Report" letter, Exhibit #14, a compelled and, therefore, *involuntary* statement, the Court's infused a *sinister* meaning without external corroboration, contrary to *Wong Sun v. United States*, 371 U.S. 471, 482, 9 L.Ed. 2d 441, 83, S. Ct. 407 (1963), where "the occupant's flight from the door must be regarded as ambiguous conduct." This letter, Exhibit #14, did not necessarily have *criminal overtones*, but was ambiguous in that regard, being primarily

focused on perceived ethical breach. The "wrongdoing" mentioned in the second to the last line of the letter, Exhibit #14, is *not necessarily the same thing* as an admission by Petitioner of having acted "wrongfully" in a criminal sense, but only "wrongly," which has an important difference in meaning. Supreme Court Rule 10(c).

7. The failure of the State to allege a location of the crime is a deprivation of due process, preventing Defendant from preparing a defense, contrary to *State v. Wilson F.*, 77 Conn. App. 405, 823 A.2d 406 (2003). Supreme Court Rule 10(b).

8. Petitioner has a right to confront his accusers. In this case, the trial court, *over Petitioner's objection*,[4] permitted the complaining witness's attorney to speculate as to the motives of an out-of-court bonding company's rationale for paying the probate bond. This ruling, where the implication was reasonable that the bonding company would not have voluntarily paid and that the Petitioner was the bonded party, deprived the Petitioner of his right of *confrontation*, contrary to *Pointer v. Texas*, 380 U.S. 400, 3 L.Ed. 2d 923, 85 S. Ct. 1065 (1965).

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[4] Transcript 4/9/2002, p. 78, line 21 et seq.

CONCLUSION

Defendant Petitioner now comes to this Court to correct these errors, where this court is the last and Supreme Guardian of the liberties so freely trodden upon by the courts, trial and appellate, below, to seek redress to obtain a reversal of the conviction, because it was contrived without due process of law.

The errors below are too often made and are in direct violation of many U.S. Supreme Court's, Federal Courts' of Appeal, and other states' courts' decisions to be left to stand as precedent in our great system of jurisprudence.

APPENDIX TO PETITION FOR A WRIT OF CERTIORIARI

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APPENDIX 1

Appellate Court Opinion, *State v. Ankerman*, 81 Conn. App. 503, 840 A.2d 1182 (2004).

STATE OF CONNECTICUT *v.* WILLIAM L. ANKERMAN
(AC 23185)
Lavery, C.J., and DiPentima and Stoughton, Js.
Syllabus

On the appeal to this court by the defendant attorney, who had been convicted of the crime of larceny in the first degree by embezzlement in connection with the embezzlement of certain funds held in trust for a minor client who had received the funds in the settlement of a personal injury action, *held*:

1. Certain unpreserved claims of the defendant did not warrant review pursuant to *State v. Golding* (213 Conn. 233) or plain error review, he having failed to request such review or to provide any meaningful analysis of his claims under those standards.

2. The defendant's claims that the trial court lacked subject matter jurisdiction because the language of the information permitted the jury to convict him even if the crime had occurred in another state and because the crime might have occurred outside of the judicial district in which he was tried were unavailing; that court had jurisdiction over the subject matter because the evidence clearly showed that the minor client lived in this state, the bank at which her account had been maintained was in this state and the defendant's actions in taking her money had occurred in this state, and the question of the proper venue was procedural, not jurisdictional, in nature and was waived by the defendant's failure to assert it at trial.

3. The trial court did not abuse its discretion in limiting the defendant's voir dire of prospective jurors; the subject questions improperly concerned the facts of the case and verdicts reached in cases in which certain venirepersons previously had served as jurors.

4. The defendant's challenges to certain evidentiary rulings of the trial court were unavailing:

   a. The trial court did not improperly deny the defendant's motion to suppress a letter he had written to the statewide grievance committee acknowledging his wrongdoing, which he claimed he was obligated to report under the rules of practice and rule 8.3(a) of the Rules of Professional Conduct; because the defendant was under no duty to report his own misconduct to the committee, the letter was written voluntarily, not as the result of state compulsion, and was not barred by the fifth amendment.

   b. The trial court did not abuse its discretion in admitting into evidence a letter the defendant had written to the attorney engaged by the victim's family, which the defendant claimed was an offer to compromise, the statements in the letter being admissible as an admission of liability by a party opponent.

   c. The trial court properly determined that a final accounting of the victim's trust account prepared by the attorney engaged by the victim's family was relevant and admissible; any inaccuracies in that document brought out on cross-examination concerned the weight to be afforded the evidence by the jury and not its admissibility.

   d. The trial court did not abuse its discretion in permitting the prosecutor to question the attorney engaged by the victim's family as to the reasons why a probate bond on the victim's trust account had been paid by an insurance company, the defendant having initiated

discussion on that question.

e. The trial court did not abuse its discretion in sustaining the state's objection to one of the defendant's answers on cross-examination, the answer having been nonresponsive to the question posed.

f. The evidence was sufficient to support the defendant's conviction of the crime charged; the evidence presented established that the defendant wrongfully took money from the victim's account in an amount in excess of $10,000.

Argued November 18, 2003—officially released February 17, 2004

Procedural History

Substitute information charging the defendant with the crime of larceny in the first degree by embezzlement, brought to the Superior Court in the judicial district of New Haven, where the court, *Lager, J.*, denied the defendant's motion to suppress certain evidence; thereafter, the court, *Fracasse, J.*, denied the defendant's motion to suppress certain evidence; subsequently, the matter was tried to the jury; verdict and judgment of guilty, from which the defendant appealed to this court. *Affirmed.*

William L. Ankerman, pro se, the appellant (defendant).

Ronald G. Weller, assistant state's attorney, with whom, on the brief, were *Michael Dearington,* state's attorney, and *John F. Blawie,* senior assistant state's attorney, for the appellee (state).

Opinion

STOUGHTON, J. The defendant, William L. Ankerman, appeals from the judgment of conviction, rendered after a

jury trial, of larceny in the first degree by embezzlement in violation of General Statutes §§ 53a-119 (1) and 53a-122 (a) (2). The defendant has raised twelve issues in his attack on his conviction. None of the claims has merit, and many of them were not preserved at trial. Accordingly, we affirm the judgment of the trial court.

The jury reasonably might have found the following facts from the evidence presented at the trial. The defendant was an attorney admitted to practice in Connecticut and a partner in the law firm of Ankerman and Smith (law firm). Leslie Forbes retained the law firm to represent his minor daughter, the victim, Elizabeth Forbes, who had been injured when struck by an automobile on November 3, 1992. The victim was fifteen years old at the time she was injured. The victim's claim for damages was settled for $100,000. On November 12, 1993, Philip A. Wright, Jr., judge of probate in Wallingford, where the Forbeses resided, appointed Leslie Forbes and his wife, Earldine R. Forbes, as guardians. The Probate Court approved the settlement. After the agreed on attorney's fees and certain expenses were deducted from the settlement amount, the sum of $66,110 was deposited in a bank account under the name of "Ankerman & Smith, Trustees for Elizabeth Forbes." The Probate Court required a bond of $30,000 of the guardians and, after additional expenses had been paid, on January 16, 1994, the guardians filed an inventory in the Probate Court showing net proceeds of the settlement of $59,039.45.

On or about October 21,1994, attorney David C. Smith sent the guardians a check drawn on the trust account for $16,259.42 and advised them that he was retaining $49,894.32 "for payment or as a contingency for payment" for certain listed medical claims and Probate Court fees. Those included claims by Yale University School of Medicine (Yale) for $10,523 and Blue Cross/Blue Shield for

$33,894.32. Those two claims, totaling $44,417.32, were never paid, although certain other claims and fees were paid from the account. Yale ultimately brought an action against the victim's parents.

On November 8, 1994, the victim reached the age of eighteen. On January 6, 1996, Smith left the law firm to accept a position outside of Connecticut and informed the victim's parents that the defendant would continue to take care of the matter.[1] On September 1, 1996, after he had been defaulted for failure to plead in the Yale lawsuit, Leslie Forbes called the defendant for assistance. The defendant succeeded in opening the default and finally, after a trial, obtained judgment for Leslie Forbes and Earldine Forbes on May 14, 1998. In the meantime, between April and December, 1996, the defendant drew checks on the trust account payable to himself or to his practice, totaling $43,137.50. None of that money was paid to the victim or to her parents, but the bonding company ultimately was required to pay the bond. An accounting dated December 8, 1995, and signed by the guardians was sent to the Probate Court, but it was rejected because it was on a form for a decedent's estate, which was not the proper form. The accounting showed $33,940.32 on hand for distribution, but subject to a Blue Cross/Blue Shield lien in that amount and to a claim by Yale for $10, 523.

The defendant never told the Forbes family that he had withdrawn the money and, at one point in 1997, told Earldine Forbes that he had all of her daughter's money. In December, 1997, no other accounting having been filed, Judge Wright scheduled a hearing for January 7, 1998, to consider removal

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[1] The law firm of Ankerman and Smith was dissolved, and the defendant continued to practice law as a solo practitioner.

of the guardians.[2] The defendant appeared at the hearing and stated that he had all of the funds and that he would prepare an accounting within two weeks. No accounting was filed, and on several subsequent dates hearings were scheduled and noticed at which the defendant failed to appear. Judge Wright suggested that the Forbeses obtain the assistance of another lawyer, and attorney Terence A. Zemetis was engaged thereafter to represent them.

Judge Wright scheduled a hearing for May 20, 1998, at which the Forbes family, Zemetis and the defendant appeared. The defendant produced a series of bank statements that revealed that the money that had been in the account was gone. Zemetis asked where the money was and the defendant replied: "It's gone, it's all gone. I'm sorry." He told Leslie Forbes that he was sorry that he had taken the victim's money. The defendant stated that he would attempt to obtain a mortgage loan to repay the money he had taken, but that he would need time to procure the funds.[3] Judge Wright ordered the defendant to file a final accounting by July 4,1998.

On July 6,1998, the defendant wrote a letter to the statewide grievance committee (committee), with a copy to Zemetis, in which he admitted to overdrawing the legal fees account and characterized his conduct as wrongdoing.[4] On December 6,1998, he wrote to Zemetis proposing a plan to

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[2] Judge Wright testified that a final accounting should have been filed shortly after the victim became eighteen years old, and, at that time, the funds should have been dispersed to her and the trust account closed.

[3] The defendant was unable to obtain a mortgage loan.

[4] On the basis of the letter, the committee commenced a complaint against the defendant and presented it to the Superior Court. After a hearing, the court suspended the defendant from the practice of law for three years. This court recently affirmed the suspension. See *Statewide Grievance Committee* v. *Ankerman*, 74 Conn. App. 464, 812 A.2d 169, cert. denied, 263 Conn. 911, 821 A.2d 767 (2003).

pay the net principal due plus interest, which he calculated to total $55,000. On April 8, 1999, the defendant testified before a grievance panel that he was deeply sorry that he had breached his duty as an attorney. After a jury trial, the defendant was convicted and sentenced. This appeal followed. Additional facts will be set forth as necessary.

I

The defendant has raised twelve issues in his brief. As we have noted, several of the claims of error were not preserved properly. The record also reveals that the defendant has failed to request review pursuant to *State* v. *Golding,* 213 Conn. 233, 239–40, 567 A.2d 823 (1989), or the plain error doctrine. See Practice Book § 60-5. "It is well established that generally this court will not review claims that were not properly preserved in the trial court. . . . The defendant's failure to address the four prongs of *Golding* amounts to an inadequate briefing of the issue and results in the unpreserved claim being deemed abandoned. ... Finally, because the defendant has neglected to analyze his claim of plain error, he has failed to demonstrate a manifest injustice. . . . Accordingly, we decline to review his unpreserved claim." (Citations omitted; internal quotation marks omitted.) *State* v. *Harvey,* 77 Conn. App. 225, 230–31, 822 A.2d 360, cert. denied, 265 Conn. 906, 831 A.2d 252 (2003). In his brief, the defendant makes only passing references to *Golding* and has provided us with no analysis of its four prongs.[5] We will not engage in *Golding* or plain error review on the basis of such an inadequate brief. We will not, therefore, address those issues raised by the defendant that were not properly preserved in the trial court. With the foregoing principles in

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[5] For example, the defendant's brief states that "[t]his [claim] is also reviewable under *State* v *Golding*, [supra, 213 Conn. 233]."

mind, we now address each of the defendant's remaining claims in turn.

II

A

In one of his many claims, the defendant asserts that the court improperly heard a case that may not have taken place in the judicial district where the trial was held and therefore may have lacked subject matter jurisdiction.

"Subject matter jurisdiction involves the authority of a court to adjudicate the type of controversy presented by the action before it. . . . The question of whether the court has such jurisdiction, however, must be informed by the established principle that every presumption is to be indulged in favor of jurisdiction." (Internal quotation marks omitted.) *State* v. *Velky,* 263 Conn. 602, 605—606, 821 A.2d 752 (2003). Our review of claims concerning subject matter jurisdiction is plenary. See *Cohen v. Yale-New Haven Hospital* , 260 Conn. 747, 754, 800 A.2d 499 (2002).

The defendant posits that because the information charged that the crime was committed in the town of Wallingford or at other locations, the jury could have convicted him if the crime had occurred in another state. That argument is wholly without merit. The evidence showed that the victim lived in Connecticut, the bank where the account was maintained was in Connecticut and the defendant's actions in taking the victim's money occurred in Connecticut. It is clear that the court had subject matter jurisdiction.[6]

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[6] The Superior Court hearing a criminal matter acquires subject matter jurisdiction from its authority as a constitutional court of unlimited jurisdiction. Conn. Const., art. 5, § 1." (Internal quotation marks omitted.) *State* v. *Mack,* 55 Conn. App. 232, 236, 738 A.2d 733 (1999).

The defendant also claims that the crime may have occurred outside of the judicial district in which he was tried. "It is a well established rule that, outside the area of administrative appeals, venue is not a jurisdictional but a procedural question; consequently, venue, unlike subject matter jurisdiction, can be waived by the parties." *State* v. *Kelley,* 206 Conn. 323, 332, 537 A.2d 483 (1988). Thus, to the extent that the defendant is challenging venue, any such claim was waived by his failure to raise it at the trial See *State* v. *Morrill,* 197 Conn. 507, 553, 498 A.2d 76 (1985).

B

The defendant next claims that the court abused its discretion by limiting questions to prospective jurors during voir dire examination. "It is well established that the trial court is vested with broad discretion to determine the extent and form of the voir dire examination." *State* v. *Faust,* 237 Conn. 454, 462, 678 A.2d 910 (1996). Voir dire that touches on the facts of the case should be discouraged. *State* v. *Rios,* 74 Conn. App. 110, 117, 810 A.2d 812 (2002), cert. denied, 262 Conn. 945, 815 A.2d 677 (2003).

The defendant complains of two rulings limiting his examination and claims that they were harmfully prejudicial to him. He has not set out those questions in accordance with our rules, leaving this court to search through the filed transcripts.

During the examination of the third potential juror, defense counsel stated that the state would introduce evidence that the larceny had occurred while the defendant was acting as an attorney, and asked whether the potential juror could be fair and impartial in such a case. An objection that the question concerned the evidence to be introduced was overruled, but before the next venireperson was called,

counsel addressed the question again. The court agreed that a question concerning an attorney accused of embezzlement in the course of his duties as an attorney would be getting into the evidence. Defense counsel thereafter refrained from asking that question, but did question potential jurors on their ability to remain impartial in a case in which the defendant was an attorney charged with embezzlement. We cannot say that the court abused its discretion when it ruled that such questions were improper because they touched on the facts of the case. See id., 117—18.

The other claim concerning the voir dire arose when it became apparent that some of the venirepersons previously had had jury service. Defense counsel was not allowed to ask those persons what the verdict had been in the cases on which they had served. Our Supreme Court previously has held that it is not an abuse of discretion to disallow such questions. See *State* v. *Couture,* 218 Conn. 309, 317—19, 589 A.2d 343 (1991).

We discern no prejudice to the defendant resulting from those rulings and conclude that the court did not abuse its discretion in ruling as it did.

C

The defendant next claims error in various evidentiary rulings by the court. We have frequently held that a court has broad discretion in ruling on the admissibility and relevance of evidence. *State* v. *Gombert,* 80 Conn. App. 477, 488, 836 A.2d 437 (2003). We will refer to additional facts where necessary.

1

The defendant first claims that the court improperly denied his motion to suppress the letter he wrote to the

committee on July 6,1998. Prior to commencement of the trial, the court, *Lager, J.,* held a hearing on the defendant's motion to suppress. Certain facts were stipulated to, including the following: When the defendant wrote the letter, he had not been ordered to do so by the probate judge, the committee itself or the committee's counsel; when he wrote the letter, the defendant was not under investigation by the committee; and when he wrote the letter, the defendant was not under arrest or in custody, and the letter was not the product of an interrogation.

In the letter, the defendant stated that he was writing to alert the committee to a serious problem with his actions. He described the settlement in the Forbes case and stated that after payments to the guardians and medical providers, there remained approximately $44,000 in the account. He wrote that from that sum, checks were drawn to cover legal services, and he stated that he had reported to the Probate Court that he had overdrawn the legal fees account by about $35,000. He acknowledged liability for the excess payments, offered as a possible explanation that he had suffered a stroke in 1993 and had had other subsequent physical problems, and stated that he was shocked by what he had done.

The defendant filed a motion to suppress the statements in his letter under both the Fifth Amendment to the United States constitution and article first, § 8, of the Connecticut constitution. Because he claimed no greater protection under the Connecticut constitution, the court properly considered the claim under the federal constitution. See *State* v. *Green,* 261 Conn. 653, 656—57 n.7, 804 A.2d 810 (2002).

The claim made by the defendant before the trial court and repeated in his brief to this court was that he was obligated under certain ethical duties imposed by the Rules of Professional Conduct and our rules of practice to report to the committee what he had done. The defendant argues,

therefore, that his statement was compelled. In essence, his claim is that the requirement of rule 8.3 (a)[7] of the Rules of Professional Conduct, that a lawyer knowing of the dishonesty of another lawyer must inform the appropriate disciplinary authority, required that he report his own dishonesty. The defendant further contends that because the committee is an arm of the court, it is sufficiently linked to the state so that his statement was one compelled by the state.

The defendant provided no authority for those contentions and our research has not revealed any.[8] The court decided, and we agree, that there is no support for those contentions in either the Rules of Professional Conduct or our rules of practice. There can be no doubt that a lawyer is bound by the Rules of Professional Conduct and subject to discipline for a breach of those duties. Furthermore, a lawyer is bound to try to protect our profession by reporting violations *on the part of other lawyers* that come to his or her attention.

In the present case, the defendant was not under a duty to report his own misconduct to the committee. We agree, therefore, with the court that the letter written by the defendant was voluntary and not the result of any state compulsion. In the absence of any compulsion, the statements contained in the letter were voluntary. Voluntary statements of any kind are not barred by the fifth

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[7] Rule 8.3 (a) of the Rules of Professional Conduct provides in relevant part that "[al lawyer having knowledge that another lawyer has committed a violation of the Rules of Professional Conduct that raises a substantial question as to that lawyer's honesty, trustworthiness or fitness as a lawyer in other respects, shall inform the appropriate disciplinary authority. ..."

[8] In its brief, the state cites Connecticut Bar Association Committee on Professional Ethics, Informal Opinion No. 97-38 (1997), which provides in relevant part that "[i]n light of the fact that *the text of Rule 8.3 (a) refers to 'another lawyer,' Rule 8.3 does not contain any requirement that a lawyer report himself or herself...."* (Emphasis added.)

amendment." (Internal quotation marks omitted.) *State* V. *Medina,* 228 Conn. 281, 290,636 A.2d 351 (1994).

2

The defendant next claims that the court improperly admitted into evidence a letter that he wrote on December 6,1998, to Zemetis, proposing a plan to pay $55,000 to the victim. The letter was admitted into evidence over objection that it was an offer to compromise and inadmissible under § 4-8 of the Connecticut Code of Evidence.[9] Section 4-8 provides that evidence of an offer to compromise is inadmissible on the issues of liability and the amount of the claim, but excepts, among other things, admissions of liability made by a party. Leaving aside whether, as claimed by the state, that rule does not apply in a criminal trial,[10] the letter clearly was an admission of liability by a party, the defendant. "[S]tatements made out of court by a party-opponent are universally deemed admissible when offered against him; 4 Wigmore, Evidence (Chadbourn Rev. 1972) § 1048, p. 2; so long as they are relevant and material to issues in the case.... [T]he vast weight of authority, judicial,

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[9] Connecticut Code of Evidence § 4-8 provides: "(a) General Rule. Evidence of an offer to compromise or settle a disputed claim is inadmissible on the issues of liability and the amount of the claim.

"(b) Exceptions. This rules does not require the exclusion of:

"(1) Evidence that is offered for another purpose, such as proving bias or prejudice of a witness, refuting a contention of undue delay or proving an effort to obstruct a criminal investigation or prosecution, or

"(2) statements of fact or admissions of liability made by a party."

[10] Our Supreme Court has stated that "[t]he policy of protecting offers of compromise in civil cases does not extend to efforts to stifle criminal prosecution by buying off the prosecuting witness or victim." (Internal quotation marks omitted.) *State v. Milum,* 197 Conn. 602, 613, 500 A.2d 555 (1985). Furthermore, one commentator has noted that § 4-8 contains terms that have a civil but not criminal connotation and that it is unclear whether I 4,8 of the Connecticut Code of Evidence applies to criminal cases. See C. Tait, Connecticut Evidence (3d Ed. 2001) § 4.26.1, p. 263.

legislative, and scholarly, supports the admissibility without restriction of any statement of a party offered against that party at trial." (Citation omitted; internal quotation marks omitted.) *State* v. *Correa,* 57 Conn. App. 98, 111—12, 748 A.2d 307, cert. denied, 253 Conn. 908, 753 A.2d 941 (2000); see also *State* v. *Stepney,* 191 Conn. 233, 250, 464 A.2d 758 (1983), cert. denied, 465 U.S. 1084, 104 5. Ct. 1455, 79 L. Ed. 2d 772 (1984). We conclude, therefore, that the court did not abuse its discretion in admitting the letter into evidence.

3

The defendant next claims that the court improperly admitted into evidence an amended final accounting prepared by Zemetis and signed by the guardians. Zemetis testified that he had prepared the document from information supplied by the Probate Court, and that he had no other files and had received no information from the defendant. Defense counsel objected to the offer as having minimal relevance, and as inaccurate and prepared with less than total knowledge. The court overruled the objection, finding that the document was relevant, and that its shortcomings and the reasons therefor were matters for the jury's consideration. We agree with the court's conclusion.

The account was the final event in winding up the victim's estate and therefore was relevant. "We repeatedly have stated that evidence is relevant if it has a logical tendency to aid the trier in the determination of an issue. . . Evidence is not rendered inadmissible because it is not conclusive. All that is required is that the evidence tend to support a relevant fact even to a slight degree, so long as it is not prejudicial or merely cumulative." (Internal quotation marks omitted.) *State* v. *Lugo,* 266 Conn. 674, 693—94, 835 A.2d 451 (2003).

In the present case, the determination reserved for the jury was whether the defendant had embezzled funds from the trust account. The final accounting provided the jury with evidence of the closing of that account. We have stated that "[t]he state may properly present evidence to show the sequence of events as they unfold." *State* v. *McNair* 54 Conn. App. 807, 815, 738 A.2d 689, cert. denied, 251 Conn. 913, 739 A.2d 1249 (1999). Thus, it is clear that the final accounting was relevant and admissible, and that any of its admitted inaccuracies, elicited during cross-examination, were matters pertinent to whatever weight the jury might assign to them.

4

The defendant next claims that the court improperly permitted the prosecutor to inquire as to why the insurance company had paid on the probate bond.[11] During the trial, Zemetis testified that he was representing the Forbes family in related civil matters, and that a claim was made and collected against the bond. When the prosecutor asked why the bond was paid, an objection was initially sustained as calling for hearsay. Defense counsel, however, had brought out during his cross-examination of the victim that she had received $30,000 from an insurance company. The prosecutor claimed that this had opened the door to further inquiry, and the objection was overruled.

Our Supreme Court has stated that "(the party who initiates discussion on the issue is said to have opened the door to rebuttal by the opposing party. Even though the rebuttal evidence would ordinarily be inadmissible on other

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[11] "The defendant also claimed that Zemetis was incompetent to testify as to why the money was paid. That claim is without merit, as it was Zemetis who made the claim on the bond and, therefore, knew why it had been paid.

grounds, the court may in its discretion, allow it where the party initiating inquiry nas made unfair use of the evidence." (Internal quotation marks omitted.) *State* v. *Ceballos,* 266 Conn. 364, 405, 832 A.2d 14 (2003). In the present case, Zemetis' testimony was in response to the defendant's questioning of the victim. Zemetis testified that the bond was paid because the person who had custody of the funds had misused them. In light of the obvious suggestion that the victim had been paid some or all of the money, we cannot say that the court abused its discretion.

5

The defendant next claims that the court improperly sustained an objection to one of his answers on cross-examination as nonresponsive to the question that had been posed. The defendant took the witness stand in his defense. The following exchange took place during his cross-examination:

"(Prosecutor]: The money is gone, isn't it, sir?

"The Defendant: It's not in that account.

"(Prosecutor]: It's gone, is it not, sir? Tell us where it is, if it's not in this account?

"The Defendant: I have a blank check here that I am—

"[Prosecutor]: I object, it's not responsive.

"[Defense Counsel]: It is responsive.

"The Court: It's not responsive. Pose your question."

Defense counsel subsequently explained in an offer of proof that the defendant had a check in the amount of $13,251, payable to himself, which was available to the victim if they could agree on the amount owed. That, however, was not relevant to the charge that he had stolen the

money in the first place, and the court did not abuse its discretion in its ruling.

D

Finally, the defendant claims that the evidence was insufficient for conviction. He filed a motion for a judgment of acquittal at the end of the state's case and again at the conclusion of the evidence. He claimed that the state had failed to prove that he wrongfully had taken the money from the account and that the amount was more than $10,000.

The standard of review on a claim of insufficiency of the evidence has been stated frequently. First, we construe the evidence in the light most favorable to sustaining the verdict, and then we determine whether, on the facts so construed, together with the inferences reasonably drawn therefrom, the cumulative force of the evidence established guilt beyond a reasonable doubt. *State* v. *Gombert,* supra, 80 Conn. App. 494—9.

APPENDIX 2

Connecticut Supreme Court's Denial of Petition for Certification

Supreme Court

State of Connecticut

No. PSC -03-0365

State of Connecticut

v.

William L. Ankerman

Order on petition for certification to appeal

On consideration of the petition by the defendant for certification to appeal from the Appellate Court, 81 Conn. App. 503 [AC23185], it is hereby ordered that said petition be and the same is hereby denied.

Zarella, J., did not participate in the consideration or decision of this petition for certification.

BY THE COURT

/s/ Alan M. Gannuscio

ASSISTANT CLERK

APPELLATE

Dated: 6/16/2004

Notice sent: 6/17/04

Clerk, Superior Court, New Haven, CR99 195282

Clerk, Appellate Court

Reporter of Judicial Decisions

SAO

William L. Ankerman, pro se

Office of the Chief State's Attorney-Appellate Bureau

William L. Ankerman, pro se, in support of petition; Ronald G. Weller, Assistant State's Attorney, in opposition.

APPENDIX 3

Connecticut Supreme Court's Denial of Motion for Reconsideration of Denial of Petition for Certification

SUPREME COURT
STATE OF CONNECTICUT
NO. AC23185

STATE OF CONNECTICUT

V.

WILLIAM L. ANKERMAN: **JULY 7, 2004**

ORDER

THE MOTION OF THE DEFENDANT, FILED JUNE 25, 2004, FOR RECONSIDERATION OF DENIAL OF PETITION FOR CERTIFICATION, HAVING BEEN PRESENTED TO THE COURT, IT IS HEREBY ORDERED DENIED.

ZARELLA, J., DID NOT PARTICIPATE IN THE CONSIDERATION OR DECISION OF THE MOTION.

BY THE COURT

/s/ Michèle T. Angers

CHIEF CLERK

NOTICE SENT:

WILLIAM L. ANKERMAN, PRO SE

Ronald G. Weller, Assistant State's Attorney
Clerk, New Haven Superior Court, (CR99-0195282 S)
Hon. Ronald J. Fracasse
Reporter of Judicial Decisions
488/031495

APPENDIX 4

14th Amendment

All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

APPENDIX 5

Connecticut General Statutes § 53a-119(1)

Larceny defined. A person commits larceny when, with intent to deprive another of property or to appropriate the same to himself or a third person, he wrongfully takes, obtains or withholds such property from an owner. Larceny includes, but is not limited to: (1) Embezzlement. A person commits embezzlement when he wrongfully appropriates to himself or to another property of another in his care or custody.

APPENDIX 6

Connecticut General Statutes § 53a-122(a)(2)

Larceny in the first degree: Class B. felony. (a) A person is guilty of larceny in the first degree-when he commits larceny, as defined in section 53a-119, and ... (2) the value of the property or service exceeds ten thousand dollars.

APPENDIX 7

The Information, dated March 12, 2002

IN THE SUPERIOR COURT FOR THE STATE OF CONNECTICUT

New Haven County, March Term 2002

John F. Blawie, Senior Assistant State's Attorney for the State of Connecticut
Accuses William Ankerman
Of LARCENY IN THE FIRST DEGREE BY EMBEZZLEMENT

and charges that at the town of Wallingford or at other locations, on or about the divers dates between August 1994 and December 1996, the said William Ankerman, with intent to deprive another of property or to appropriate the same to himself or a third person, did wrongfully appropriate to himself property of another in his care or custody, and the value of such property exceeded ten thousand dollars ($10,000), in violation of Sections 53a-119(1) and 53a-122(a)(2) of the Connecticut General Statutes.

Dated at New Haven, Connecticut this 12th day of March 2002.

/s/ John F. Blawie
Senior Assistant State's Attorney

APPENDIX 8

Defendant's Motion for Judgment of Acquittal, Oral

(Transcript 4/10/2002, page 95, line 7 et seq.).

MR. DONOVAN: May it please the court, this is the moment for judgment of acquittal at the close of the State's case. We argue the State has not proved each and every element of the crime that they have alleged; that even viewed in light that your Honor has to view the evidence in making this judgment, the evidence is insufficient. In particular, we would argue that the State has filed to demonstrate that the transfer of funds from Elizabeth Forbes' trustee account to Mr. Ankerman were not justified, and so that they failed to prove that he wrongfully took the amounts; and then we would also argue that the State has filed to prove an amount over $10,000.00. Although here has been evidence, a great deal of documentary evidence introduced, that evidence does not prove beyond a reasonable doubt that the amount taken was more than $10,000.00. So for these reasons we would ask that you grant our Motion for Judgment of Acquittal.

(Transcript 4/10/2002, page 96, lines 17-19).

THE COURT: All right, the Court finds the evidence is sufficient to go to the jury. The Motion for Judgment of Acquittal is denied.